

**RULES
OF
DEPARTMENT OF INSURANCE
DIVISION OF INSURANCE**

**CHAPTER 0780-1-46
RELATING TO SECURITIES HELD UNDER CUSTODIAL AGREEMENTS AND
PARTICIPATION
BY INSURANCE COMPANIES IN DEPOSITORY TRUST COMPANIES AND FEDERAL
RESERVE BOOK ENTRY SYSTEMS**

TABLE OF CONTENTS

0780-1-46-.01	Purpose	0780-1-46-.03	Permissible Methods of Holding
0780-1-46-.02	Definitions		Securities
		0780-1-46-.04	Required Custodian Affidavits

0780-1-46-.01 PURPOSE.

- (a) The purpose of this Chapter is to expedite the verification of insurance company assets during examinations conducted by the Department; to reduce costs and simplify delivery and receipt procedures involved in security transactions by insurance companies; to reduce the exposure of securities to loss, theft, misplacement, damage, and other destruction; and to better provide for the storage, inspection, transportation, counting and insuring of securities.
- (b) Further purposes are to establish procedures for the verification of securities which insurance companies deposit in banks under custodial agreements; to permit insurance companies to hold securities in other than definitive certificates; to better safeguard the actual securities; to facilitate checking assets of an insurance company; and to recognize that definitive securities no longer represent the only tangible evidence of security obligations held by an insurance company.

Authority: T.C.A. §56-3-112. **Administrative History:** Original rule filed October 27, 1980; effective December 11, 1980.

0780-1-46-.02 DEFINITIONS.

- (1) The following words and terms, when used in this Chapter, shall have, unless the context clearly indicates otherwise, the following meanings:
 - (a) *Definitive Security.* Includes but is not limited to bonds, notes, debentures, stock certificates and other like securities.
 - (b) *Department.* The Insurance Department of the State of Tennessee.
 - (c) *Commissioner.* The Commissioner of Insurance, his designees, or the Department of Insurance, as may be appropriate.
 - (d) *Clearing Corporation.* A depository corporation which maintains a book entry accounting system which meets the requirements of the definition of the terms in T.C.A. §47-8-101(3), including the Depository Trust Company or any other like entity which meets similar standards of depository safeguards and regulatory control.

(Rule 0780-1-46-.02, continued)

Authority: T.C.A. §56-3-112. **Administrative History:** Original rule filed October 27, 1980; effective December 11, 1980.

0780-1-46-.03 PERMISSIBLE METHODS OF HOLDING SECURITIES.

- (1) (a) An insurance company may hold securities in definitive certificates.
- (b) An insurance company may participate in the book entry system of the Federal Reserve through a member bank of the Federal Reserve System which, as a custodian, can transact and maintain book entry securities for the insurance company. This subsection shall not preclude an insurance company from participation in the Federal Reserve book entry system under a custodial agreement with a state-chartered bank which has redeposited securities with a member bank for participation in the Federal Reserve book entry program.
- (c) An insurance company may participate in depository systems of clearing corporations through a custodian bank.
- (d) Securities to be placed on deposit with the Commissioner of Insurance of the State of Tennessee pursuant to the provisions of T.C.A. §§56-2-104, 56-21-102, 56-35-116 and 56-13-117 must be maintained under a separate custodian agreement between the depository (commercial bank or clearing corporation), the insurance company and the Department of Insurance.
 - (i) This custodian agreement must contain provisions to require the depository to provide verification of securities on deposit.
 - (ii) The Department of Insurance may require such verification from the custodian at any time it deems that verification is appropriate. Examples of appropriate verification documents are Forms A, B and C.
 - (iii) An authorized signature for the insurance company and the Commissioner of Insurance and/or his deputy must concurrently appear on any withdrawal notices to the depository. Such withdrawal instructions shall be a part of the custodial agreement.

Authority: T.C.A. §56-3-112. **Administrative History:** Original rule filed October 27, 1980; effective December 11, 1980.

0780-1-46-.04 REQUIRED CUSTODIAN AFFIDAVITS.

- (1) (a) Insurance companies shall have executed the appropriate Custodian Affidavits Forms A, B or C for its securities held under custodial agreements. Such executed forms shall be available for purposes of insurance company examinations under T.C.A. §§56-1-408 through 56-1-413. Failure to provide the appropriate custodian affidavit will result in the Insurance Department's treating as non-admitted assets those of an insurance company's securities held by the custodian; further, for the purposes of such examinations, the underlying agreement between an insurance company and a custodian shall be available. An insurance company shall require – in addition to any other provisions – that such a custodial agreement provide a standard of responsibility on the part of the custodian which shall not be less than the responsibility of a bailee for hire or a fiduciary under statutory or case law of Tennessee; that securities held by the custodian are subject to instructions of the insurance company; and that securities may be withdrawn immediately upon demand of the insurance company.

- (b) It shall be the responsibility of each insurance company which enters into a custodial agreement to determine that the custodian maintains sufficient records to verify information which the insurance company reports on Schedule D of its Annual Statement blanks.
- (c) The following forms are promulgated as part of this Chapter.

FORM A
CUSTODIAN AFFIDAVIT

(For use by a custodian bank for securities entrusted to its care which have not been redeposited elsewhere.)

STATE OF _____)
)SS:
COUNTY OF _____)

_____, being duly sworn
deposes and says that he is _____ of
_____, a banking corporation organized under and
pursuant to the law of the _____ with the principal place
of business at _____
(hereinafter called the "bank");

That his duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____
having a place of business at _____ (hereinafter called
the "insurance company") pursuant to an agreement between the bank and the insurance company;

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with the Depository Trust Company or like entity or a Federal Reserve bank under the Federal Reserve book entry procedure) which were in the custody of the bank for the account of the insurance company as of the cost of business on _____; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or a nominee of the bank, or were in the process of being registered in such form;

That the bank as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____, _____.

_____(L.S.)
Vice President or other authorized officer

FORM B
CUSTODIAN AFFIDAVIT

(For use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity.)

STATE OF _____)
)SS:
COUNTY OF _____)

_____, being duly sworn
deposes and says that he is _____ of the
_____, a banking corporation organized under and
pursuant to the laws of the _____ with its principal place
of business at _____
(hereinafter called the "bank");

That his duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____
with a place of business at _____ (hereinafter called
the "insurance company") pursuant to an agreement between the bank and the insurance company;

That the bank has caused certain of such securities to be deposited with _____
_____, and that the
schedule attached hereto is a true and complete statement of the securities of the insurance company of
which the bank was custodian as of the close of business on _____, and
which were so deposited on such date;

That the bank as custodian has the responsibility for the safekeeping of such securities whether in the
possession of the bank or deposited as that responsibility is specifically set forth in the agreement between
the bank as custodian and the insurance company; and

That, to the best of his knowledge and belief, unless otherwise shown on the schedule, said securities were
the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____, _____.

_____(L.S.)
Vice President or other authorized officer

FORM C
CUSTODIAN AFFIDAVIT

(For use where ownership is evidence by book entry at a Federal Reserve Bank.)

STATE OF _____)
)SS:
COUNTY OF _____)

_____, being duly sworn
deposes and says that he is _____ of
the _____, a banking corporation organized under
and pursuant to the laws of the _____ with its principal
place of business at _____ (hereinafter
called the "bank");

That his duties involve the supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____
with a place of business at _____ (hereinafter called
the "insurance company") pursuant to an agreement between the bank and the insurance company;

That it has caused certain of such securities to be credited to its book entry account with a Federal Reserve
Bank under the Federal Reserve book entry procedure; and that the schedule attached hereto is a true and
complete statement of the securities of the insurance company of which the bank was custodian as of the
close of business on _____ which were in a "General" book entry
account maintained in the name of the bank on the books and records of a Federal Reserve Bank at such
date;

That the bank has the same responsibility for the safekeeping of such securities whether in the possession
of the bank or in said "General" book entry account as that responsibility is specifically set forth in the
agreement between the bank as custodian and the insurance company; and

That, to the best of his knowledge and belief, unless otherwise shown on the schedule, said securities were
the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____, _____.

_____(L.S.)
Vice President or other authorized officer

Authority: Chapter 503, Public Acts of 1980. **Administrative History:** Original rule filed October 27,
1980; effective December 11, 1980.